



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

In Re: 8479844

Date: DEC. 28, 2020

Appeal of Nebraska Service Center Decision

Form I-140, Immigrant Petition for Alien Worker (Advanced Degree, Exceptional Ability, National Interest Waiver)

The Petitioner, a university, seeks second preference immigrant classification for the Beneficiary as a member of the professions holding an advanced degree, as well as a national interest waiver of the job offer requirement attached to this EB-2 classification. *See* Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2).

The Director of the Nebraska Service Center denied the petition, concluding that the Beneficiary qualified for classification as a member of the professions holding an advanced degree, but that he had not established that a waiver of the required job offer, and thus of the labor certification, would be in the national interest.

On appeal, the Petitioner submits additional documentation and a brief asserting that the Beneficiary is eligible for a national interest waiver under the *Dhanasar* framework.

In these proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. Upon *de novo* review, we will sustain the appeal.

I. LAW

To establish eligibility for a national interest waiver, a petitioner must first demonstrate the beneficiary's qualification for the underlying EB-2 visa classification, as either an advanced degree professional or an individual of exceptional ability in the sciences, arts, or business. Because this classification requires that the individual's services be sought by a U.S. employer, a separate showing is required to establish that a waiver of the job offer requirement is in the national interest.

Section 203(b) of the Act sets out this sequential framework:

- (2) Aliens who are members of the professions holding advanced degrees or aliens of exceptional ability. –

(A) In general. – Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.

(B) Waiver of job offer –

(i) National interest waiver. . . . [T]he Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien’s services in the sciences, arts, professions, or business be sought by an employer in the United States.

While neither the statute nor the pertinent regulations define the term “national interest,” we set forth a framework for adjudicating national interest waiver petitions in the precedent decision *Matter of Dhanasar*, 26 I&N Dec. 884 (AAO 2016).¹ *Dhanasar* states that after a petitioner has established eligibility for EB-2 classification, U.S. Citizenship and Immigration Services (USCIS) may, as matter of discretion², grant a national interest waiver if the petitioner demonstrates: (1) that the foreign national’s proposed endeavor has both substantial merit and national importance; (2) that the foreign national is well positioned to advance the proposed endeavor; and (3) that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification.

The first prong, substantial merit and national importance, focuses on the specific endeavor that the foreign national proposes to undertake. The endeavor’s merit may be demonstrated in a range of areas such as business, entrepreneurialism, science, technology, culture, health, or education. In determining whether the proposed endeavor has national importance, we consider its potential prospective impact.

The second prong shifts the focus from the proposed endeavor to the foreign national. To determine whether he or she is well positioned to advance the proposed endeavor, we consider factors including, but not limited to: the individual’s education, skills, knowledge and record of success in related or similar efforts; a model or plan for future activities; any progress towards achieving the proposed endeavor; and the interest of potential customers, users, investors, or other relevant entities or individuals.

The third prong requires the petitioner to demonstrate that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification. In performing this analysis, USCIS may evaluate factors such as: whether, in light of the nature of the foreign national’s qualifications or the proposed endeavor, it would be impractical either for the foreign national to secure a job offer or for the petitioner to obtain a labor certification; whether, even assuming

¹ In announcing this new framework, we vacated our prior precedent decision, *Matter of New York State Department of Transportation*, 22 I&N Dec. 215 (Act. Assoc. Comm’r 1998) (*NYSDOT*).

² See also *Poursina v. USCIS*, No. 17-16579, 2019 WL 4051593 (Aug. 28, 2019) (finding USCIS’ decision to grant or deny a national interest waiver to be discretionary in nature).

that other qualified U.S. workers are available, the United States would still benefit from the foreign national's contributions; and whether the national interest in the foreign national's contributions is sufficiently urgent to warrant forgoing the labor certification process. In each case, the factor(s) considered must, taken together, indicate that on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification.³

II. ANALYSIS

The Director found that the Beneficiary qualifies as a member of the professions holding an advanced degree.⁴ The sole issue to be determined is whether the Petitioner has established that a waiver of the requirement of a job offer, and thus a labor certification, would be in the national interest.

At the time of filing, the Petitioner was serving as an assistant professor of agricultural sciences for the Petitioner.⁵ For the reasons discussed below, we conclude that the Petitioner has established eligibility for a national interest waiver under the analytical framework set forth in *Dhanasar*.

A. Substantial Merit and National Importance of the Proposed Endeavor

The Petitioner indicated that the Beneficiary intends to continue his research in agricultural soil science. In a letter accompanying the petition, [REDACTED] Director of the School of Agricultural Sciences for the Petitioner, explained that the Beneficiary's proposed research is aimed at curbing greenhouse gas emissions from agricultural production systems, making agricultural soils more fertile and drought-resistant, using soil management practices to improve water quality, and developing organic and biological-based fertilizers.⁶ In response to the Director's request for evidence (RFE), the Petitioner maintained that the Beneficiary's proposed endeavor involves "research efforts in agricultural soil science" and that his undertaking is focused "on soil and its role in maximizing crop production, food and water security, and greenhouse gas emissions."

The Director determined that the Beneficiary's proposed endeavor has substantial merit, but that the Petitioner had not demonstrated its national importance. In denying the petition, the Director concluded that the Petitioner had not established that the Beneficiary's "proposed endeavor of assistant professor will have a potential prospective impact that rises to a level that can be deemed to be nationally important." The Director's decision, however, misstates the Beneficiary's proposed

³ See *Dhanasar*, 26 I&N Dec. at 888-91, for elaboration on these three prongs.

⁴ The Petitioner received a Ph.D. in Soil Environmental and Atmospheric Science from University [REDACTED] in 2011.

⁵ As the Petitioner is applying for a waiver of the job offer requirement, it is not necessary for the Beneficiary to have a job offer from a specific employer. However, we may consider information about this position to illustrate the capacity in which the Beneficiary intends to work in order to determine whether his proposed endeavor meets the requirements of the *Dhanasar* analytical framework.

⁶ In addition to discussing the Beneficiary's proposed research endeavor, this letter indicated that the Petitioner's assistant professor position involved teaching, assisting with student recruitment, collaborating with government and industry partners, advising students in the Agricultural Sciences department, participating in university committee work, and supervising graduate student research. Likewise, the record includes an Application for Alien Employment Certification (Form ETA-750B) indicating that the Beneficiary's duties as assistant professor include performing independent research, collaborating with governmental and industry partners, advising students in Agricultural Sciences, participating in university committee work, and teaching courses in soil science.

endeavor and ignores the Petitioner's documentation indicating that the Beneficiary plans to continue his research in agricultural soil science.⁷

On appeal, the Petitioner contends that the Director "improperly concentrates his entire analysis on the Beneficiary's occupation, and specifically, his teaching duties. In doing so, the Director completely ignores that the first prong of the *Dhanasar* framework is prospective, focusing on . . . the proposed endeavor, and is not limited to [the Beneficiary's] occupation." The Petitioner further argues that the Beneficiary's proposed "research in agricultural soil science has national importance as it seeks to curb greenhouse gas emissions, make agricultural soils more fertile, improve water quality, and develop organic and biological-based fertilizers."

To satisfy the national importance requirement, the Petitioner must demonstrate the "potential prospective impact" of the Beneficiary's work. As evidence that the benefit of his proposed work has broader implications in the soil science field, the Petitioner provided letters of support discussing how the Beneficiary's undertaking stands to advance development of methods for improving soil health and soil function.⁸ For instance, [REDACTED] a soil scientist with the U.S. Department of Agriculture (USDA) Natural Resources Conservation Service (NRCS), explained that the Beneficiary's proposed research offers "alternative fertilizer options, improved water quality, and a deeper understanding of how the United States can adapt soils effected by extreme conditions." Furthermore, the Petitioner has submitted documentation indicating that the benefit of the Beneficiary's proposed research has broader implications for the field, as the results are disseminated to others in the field through scientific journals and conferences. As the Petitioner has documented both the substantial merit and national importance of the Beneficiary's proposed endeavor, we conclude that he meets the first prong of the *Dhanasar* framework.

B. Well Positioned to Advance the Proposed Endeavor

The second prong shifts the focus from the proposed endeavor to the Beneficiary. The record includes his academic records, peer review activity, published and presented work, and media reports relating to him and his research projects. In addition, the Petitioner offered documentation of funding grants received by the Beneficiary's projects, and letters of support discussing his expertise in soil science research and his past record of success in that field. As discussed below, the record supports the Director's determination that the Beneficiary is well positioned to advance his proposed endeavor.

⁷ The Director's RFE specifically acknowledged that "the Beneficiary will be working as a soil science researcher/assistant professor." The Director's analysis in the denial decision under *Dhanasar*'s first prong, however, focused mainly on Beneficiary's teaching duties as an assistant professor and ignored the Petitioner's information indicating that his proposed endeavor involves agricultural soil science research. While the Director's decision questioned "how much time will be devoted to [the Beneficiary's] research," the Director's RFE did not raise this issue and afford the Petitioner an opportunity for rebuttal. Regardless, we do not share the Director's concern regarding the amount of time the Beneficiary intends to devote to his proposed research. For example, the Petitioner's response to the Director's RFE showed that the Beneficiary continues to actively publish and present his soil science research findings and that his ongoing research is being funded through grants from the United States Department of Agriculture.

⁸ The record also includes articles about the agricultural industry's contribution to greenhouse gas emissions, [REDACTED], the effect of agricultural runoff on water quality, and usage of methane digester systems to reduce greenhouse gas emissions.

Multiple expert references identify examples of how the Beneficiary's work has been utilized in the agricultural industry or has otherwise affected the soil science field. For example, with respect to utilization of the Beneficiary's work involving adaptation of cover crops, [redacted] a conservationist with USDA-NRCS, stated that the Beneficiary's "research has already been implemented by small businesses and farmers throughout the [redacted] region, creating model practices that can be implemented throughout the United States." Likewise, [redacted] an agricultural consultant and former USDA science adviser, asserted that the Beneficiary "has developed methods of analysis for emerging biotechnology crops and the associated chemicals used in agricultural production within the United States" and that "[h]is developments have been sponsored by companies like [redacted] [redacted], [redacted] and [redacted]" Furthermore, [redacted] professor of soil biophysics at [redacted] University, discussed the Beneficiary's work involving using [redacted] to enhance soil's "water holding capacity and increase water available in the soil during the dry months." [redacted] indicated that the Beneficiary's research on the modification and use of [redacted] has helped us understand the relationship between soil, water, and soil amendments."

The record includes additional detailed expert letters describing U.S. Government interest and investment in the Beneficiary's research, and documentation showing that he has played a significant role in projects funded by grants from the USDA and private enterprises in the field.⁹ Thus, the significance of the Beneficiary's research in his field is corroborated by evidence of peer and government interest in his research, as well as by consistent government and corporate funding of the Beneficiary's research projects. We conclude that the Beneficiary's education, experience, and expertise in his field, his record of publications and presentations, the significance of his role in multiple research projects, as well as the sustained interest of and funding from government and corporate entities, position him well to continue to advance his proposed endeavor of agricultural soil science research. Accordingly, the record demonstrates that the Beneficiary satisfies the second prong of the *Dhanasar* framework.

C. Balancing Factors to Determine Waiver's Benefit to the United States

As explained above, the third prong requires the petitioner to demonstrate that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification. As an assistant professor of agricultural sciences, the Beneficiary possesses considerable experience and expertise in soil science, soil microbiology, and agricultural development and production. The record also demonstrates the widespread benefits associated with research progress involving soil and its role in crop production maximization, food and water security, and greenhouse gas emissions. In addition, the Petitioner has documented the Beneficiary's past successes in advancing research relating to the development of novel microbial identification techniques, the connection between soil microorganisms and atmospheric greenhouse gas concentrations, the utilization of [redacted] [redacted] and reduce greenhouse gas emissions, and the development of efficient ways to convert animal waste into energy and organic fertilizer. Based on the Beneficiary's track record of successful research and the significance of his proposed work to advance U.S. agricultural interests, we conclude that he offers contributions of such value that, on balance, they would benefit the United States even assuming that other qualified U.S. workers are available.

⁹ The Petitioner provided copies of the Beneficiary's research grants and media reports relating to his funded projects.

III. CONCLUSION

As the Petitioner has met the requisite three prongs set forth in the *Dhanasar* analytical framework, we conclude that it has established the Beneficiary is eligible for and otherwise merits a national interest waiver as a matter of discretion.

ORDER: The appeal is sustained.